IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6369 of 1998
and
CIVIL APPLICATION No 8471 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEHTA NARBHERAM JASABHAI & ORS.
Versus
AMRELI DISTRICT PANCHAYAT & ORS.

Appearance:
MR BHUSHAN B OZA for Petitioners Nos. 1-6
MR JM BAROT for MR HS MUNSHAW for Respondents Nos.1-2
MR ASHISH J.DESAI, AGP for Respondent No. 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 15/09/2004

ORAL JUDGEMENT

Heard the learned advocates.

Feeling aggrieved by the orders dated 3rd August,

1998 made by the District Development Officer, District Panchayat Amreli terminating the service of the petitioners as Multipurpose Health Worker (Male), the petitioners have preferred the present petition.

It is the claim of the petitioners that they were engaged by the District Panchayat, Amreli as Superior Field Worker since the year 1980-1981. Thus, the petitioners had been engaged as Superior Field Worker for more than 10 years. By Resolution dated 20th December, 1995 the State Government allowed certain concessions with respect to the Superior Field Workers for appointment as Multipurpose Health Worker (Male). Pursuant to the said Resolution dated 20th December, 1995, by orders dated 20th December, 1997 the petitioners were appointed as Multipurpose Health Worker (Male). Without rhyme or reason, by impugned orders dated 3rd August, 1998, the petitioners' services were terminated on the ground that the petitioners' appointment was contrary to the relevant recruitment rules.

Learned advocate Mr.Oza has submitted that the statement made in the petition that the petitioners were engaged since the year 1980/1981 has not been controverted. Hence, it should be believed that the petitioners had been engaged as Superior Field Worker continuously for 10 years. The petitioners were, therefore, entitled to concession allowed by the State Government under the aforesaid Government Resolution dated 20th December, 1995. The petitioners' appointment as Multipurpose Health Worker (Male) was, thus, in consonance with the recruitment rules read with the aforesaid Government Resolution dated 20th December, 1995. The petitioners' appointment, therefore, cannot be said to be contrary to the recruitment rules. Their service could not have been terminated on spacious ground that the appointment was contrary to the relevant recruitment rules. He has submitted that the respondents are now estopped from contending that the petitioners were not eligible for such appointment. Mr.Oza has also submitted that pending this petition, under orders made by this Court, the petitioners had been sent for training as Multipurpose Health Worker (Male). The petitioners have undergone one year's training as Multipurpose Health Worker (Male) and have passed the examination. The petitioners have now been qualified for appointment as Multipurpose Health Worker (Male). The petitioners are, therefore, required to be reinstated as Multipurpose Health Worker (Male).

Under the National Malaria Eradication Programme

the Superior Field Workers are engaged every year during the Monsoon for spraying disinfectants and larvicidals. Such Superior Field Workers were later absorbed in regular service in malaria cadre. Pursuant to the instructions issued by the Government of India, in the year 1977 a separate cadre of Multipurpose Health Worker was created. The candidates who have passed S.S.C. examination are selected for appointment as Multipurpose Health Worker. They are sent for one year's training. After completing the training and passing the examination they are appointed as Multipurpose Health Worker. On account of the direct selection and recruitment made to the posts of Multipurpose Health Worker, the Superior Field Workers lost the chance of being absorbed in the regular service. Pursuant to the representation made by such Superior Field Workers, by Government Resolution dated 26th August, 1992, it was decided that the Superior Field Workers who had been engaged as such continuously for a period of 10 years; who had passed S.S.C. examination prior to such 10 years and who had not completed 40 years of age as on 1st April, 1991, be sent for training as Multipurpose Health Worker (Male) and, after successfully undergoing the training they be appointed as Multipurpose Health Worker (Male). Necessary relaxation in the relevant rules with respect to the age bar was directed to be given for training as Multipurpose Health Worker and for recruitment to the post of Multipurpose Health Worker. Pursuant to the said Resolution, by Resolution dated 20th December, 1995, the recruitment rules for appointment to the post of Multipurpose Health Worker were relaxed with respect to the Superior Field Workers to the extent that the upper age limit of 25 years was extended to 40 years as on 1st April, 1991. Clause (2) of the said Resolution specifically provided that suitable Superior Field Worker shall have to take specified training and pass the examination at the end of the training. The candidate who failed to pass such examination within the specified period shall have no right to appointment as Multipurpose Health Worker. Pursuant to the said Resolution, the petitioners' suitability was examined by the District Panchayat Service Selection Committee, Amreli. On the basis of the suitability determined by the said Committee, by orders dated 20th December, 1997, the petitioners were appointed as Multipurpose Health Worker (Male). It is admitted fact that neither of the petitioners had taken the training specified for the appointment as Multipurpose Health Worker (Male). The State Government having noticed irregularities in appointment of Multipurpose Health Worker (Male) from amongst the Superior Field Workers, a general instruction

to all District Panchayats came to be issued by the Commissioner of Health and Medical Services and Medical Education (Health Services), Gandhinagar under his communication dated 22nd December, 1997 followed by general instructions issued on 28th May, 1998 followed by a specific direction dated 17th August, 1998 issued to the District Development Officer, District Panchayat, Amreli. Pursuant to the said directions, the petitioners' service came to be terminated on 3rd August, 1998.

The appointment to the posts of Multipurpose Health Worker (Male) is governed by the Multi-purpose Health Workers (Health and Family Welfare Department) Recruitment Rules, 1981 made in exercise of powers conferred by proviso to Article 309 of the Constitution of India. Rule 2 thereof provides for appointment to be made by direct selection. Rule 3 thereof provides for eligibility for such appointment. The said Rule reads as under :

"3. To be eligible for appointment by direct selection to the post, a candidate must;
(1) not be more than 25 years of age,
(2) have passed Secondary School Certificate Examination or other equivalent Examination from recognised Board.
(3) a. have passed Sanitary Inspector's Examination or,
b. have undergone training of Family Planning Assistant for six months and declared pass, and have taken training of vaccination or performed 100 primary vaccination satisfactorily, or
c. have undergone 1-1/2 years training of Multipurpose Health Workers and declared pass."

Thus, passing of the Sanitary Inspector's Examination or successful training of Family Planning Assistant or successful training of Multipurpose Health Worker is a pre-requisite for being eligible for appointment as Multipurpose Health Worker. As it is evident, by Resolution dated 26th August, 1992 the said eligibility criteria was relaxed to the extent that the Superior Field Workers who had not completed the age of 40 years as on 1st April, 1991 were considered to be eligible for selection and appointment as Multipurpose Health Worker (Male) provided that such Superior Field Workers had been engaged as Superior Field Workers continuously for 10 years and had passed the S.S.C. Examination before such

10 years. No concession was allowed with respect to the requirement of undergoing training as Multipurpose Health Worker. On the contrary, the said Resolution specifically mentioned that such Superior Field Workers be appointed as Multipurpose Health Worker (Male) after they successfully undergo the training of Multipurpose Health Worker. Hence, before appointment as Multipurpose Health Worker, taking the training as Multipurpose Health Worker was sine qua non. The petitioners who admittedly had not taken such training could not have been appointed as Multipurpose Health Worker (Male). The appointment of the petitioners as Multipurpose Health Worker by orders dated 20th December, 1997 was made in gross violation of the statutory recruitment rules, was illegal and void ab initio. The petitioners, therefore, could not have claimed right to continue as Multipurpose Health Worker (Male) nor can they have legitimate grievance against the termination of their service.

There is one more reason why the persons without training could not have been appointed as Multipurpose Health Worker (Male) or could not have been assigned the duties of Multipurpose Health Worker. The statement of job responsibility of Multipurpose Health Worker (Male) has been annexed to the counter affidavit (Annexure-'C' to the affidavit). The said job responsibilities involve the duties relating to Malaria, Smallpox, Maternal and Child Health, Nutrition, Medical Termination of Pregnancy, Primary Medical Care, etc. The said duties involve identifying the cases of malaria and smallpox, collecting blood samples and making blood films, administer preventive treatment, maintain record of the results of examination of blood films, impart education to the community on importance of blood film examination for fever cases, treatment of fever cases, insecticidal spraying of houses, larviciding measures, and other measures to control the spread of malaria, to organise immunization programme, to conduct vaccination, hygiene and sanitation and such other work relating to public health. Such work touching the health of the people cannot be entrusted to the persons who are not trained for such job. Leaving such job in untrained hands would amount to exposing the rural people to health problems rather than to help them solve the health problems. The victim/s may be put into an irreversible condition, adding plight to their lives. In my view it was absolutely wrong of the District Panchayat, Amreli in appointing the petitioners as Multipurpose Health Worker (Male) without their taking the requisite training.

By later affidavit made by the Assistant Director

of Health on 19th July, 2000, it has been brought on the records that none of the petitioners was eligible for relaxation allowed by the Government Resolution dated 26th August, 1992 i.e. none of the petitioners had been engaged continuously for 10 years as Superior Field Worker. The statement (Annexure-'C' to the said affidavit) discloses that the petitioners were first engaged as Superior Field Worker in the years 1988, 1992, 1993 and 1995. In other words, two of the petitioners were not engaged as Superior Field Worker prior to 1st April, 1991.

Learned advocate Mr.Oza has submitted that the petitioners cannot be expected to have access to the records. They, therefore, are not in a position to controvert the aforesaid statement. Pursuant to the Government Resolutions dated 26th August, 1992 and 20th December, 1995 the petitioners were appointed as Multipurpose Health Worker (Male) and their service was terminated on the ground of want of training alone. Hence, in case of the petitioners the requirement of 10 years' continuous service as Superior Field Worker should be deemed to have been waived. The petitioners cannot be denied appointment on the said ground. The petitioners, having taken the required training, have now become eligible for such appointment. The petitioners, therefore, should be given such appointment forthwith.

It should be noted here that the District Development Officer appointed the petitioners in contravention of the recruitment rules under the guise of relaxation granted under the above referred Government Resolutions dated 26th August, 1992 and 20th December, 1995, though the petitioners were ex facie not entitled to such relaxation. Even in case the petitioners were entitled to such relaxation, the petitioners could not have been appointed as Multipurpose Health Worker without the requisite training. Though the petition has been contested by the District Panchayat, the counter affidavits have been made by the District Health Officer on 29th August, 1998 and by In-charge Chief District Health Officer on 4th September, 1998, neither of the said deponents has denied the statement made by the petitioners that "...the petitioners were initially taken on service on the post of Superior Field Worker and they were taken in service on the said post since the year of 1980-81 and all the petitioners had completed 10 years of their respective service as the Superior Field Worker." Nor did the said deponents bring on record the particulars about each petitioner. These facts have been

brought on the record of the matter by the Assistant Director (Family Welfare) in the counter affidavit made on 19th July, 2000. In other words, the District Panchayat has maintained a tacit silence about the eligibility of the petitioners to avail of the concession allowed by the State Government. The District Panchayat, therefore, appears to have, in collusion with the petitioners, allowed the benefit of the Government Resolutions dated 26th August, 1992 and 20th December, 1995 though the petitioners were not entitled to the said benefit. It appointed the petitioners as Multipurpose Health Worker though they were not eligible for such appointment. The District Panchayat misused its power. The matters pertaining to public health, hygiene and sanitation, sublime to the human existence became secondary to the interest of a few Superior Field Workers. It was only after repeated instructions issued by the State Government that the service of the petitioners was terminated by the impugned orders.

I am unable to agree with the said contention. As it is, the Superior Field Workers had been made eligible for appointment as Multipurpose Health Worker (Male) by relaxing the requirement under the statutory rules on conditions mentioned in the Resolution dated 26th August, 1992. It was, therefore, imperative that the petitioners did answer to the said conditions. Unless the petitioners fulfilled the conditions mentioned in the said Resolution, the petitioners could not have claimed the benefit of relaxation in the Recruitment Rules. It is not disputed that the petitioners did not fulfill the condition of having worked as Superior Field Worker continuously for 10 years. In fact, the petitioners Nos.2 and 6 were first engaged as Superior Field Worker much later i.e. in the years 1995 and 1992 respectively. Rest of the petitioners were first engaged as Superior Field Worker in the year 1988. Thus, not only they had not been engaged for 10 years as on 1st April, 1991, but they had not completed 10 years even on the date of their appointment. The District Panchayat was not empowered to waive any of the conditions mentioned in the said Resolutions. The question of waiver, therefore, shall not arise. Moreover, the principle of promissory estoppel cannot be invoked against the statute; certainly not when individual interest is pitted against the public interest.

In view of the above discussion, the petitioners were not eligible for appointment as Multipurpose Health

Worker (Male). Nor were the petitioners entitled to claim relaxation in the recruitment rules under the Government Resolution dated 26th August, 1992. Besides, the petitioners are now around the age of 50 years. The petitioners cannot be permitted to enter the public service at such advanced age. The petitioners are, therefore, not entitled to any relief. The petition is dismissed. Rule is discharged. Interim relief, if operative, shall stand vacated. The parties shall bear their own cost. Civil Application stands disposed of.

(Ms. R.M.Doshit, J.)
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